

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

|                            |   |                     |
|----------------------------|---|---------------------|
| United States of America,  | ) |                     |
|                            | ) |                     |
| Plaintiff,                 | ) |                     |
|                            | ) |                     |
| vs.                        | ) | Case No. 3:03-cr-22 |
|                            | ) |                     |
| David Thomas McCracken,    | ) |                     |
| aka David Thomas McCrakin, | ) |                     |
|                            | ) |                     |
| Defendant.                 | ) |                     |

**REPORT AND RECOMMENDATION**

On July 2, 2003, David Thomas McCracken ("McCracken") was sentenced in the United States District Court for North Dakota to a term of imprisonment of thirty months followed by three years of supervised release for the offense of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) & § 924(a)(2). McCracken began his term of supervised release on October 7, 2005. A petition was filed in this court on November 17, 2006, alleging three violations of McCracken's conditions of supervised release. The petition alleges that McCracken (1) failed to report for scheduled appointments with his probation officer in violation of Standard Condition #2; (2) did not inform his probation officer that he had been released from employment in violation of Standard Conditions #5, #6; and (3) failed to report for scheduled urine tests in violation of Special Condition #3.

Judge Rodney Webb held McCracken's initial appearance on December 22, 2006. The government moved to detain McCracken, and a detention hearing was scheduled before the magistrate judge on January 3, 2007. McCracken appeared with attorney Richard Henderson,

from the Federal Public Defender's Office. Nicholas Chase, Assistant United States Attorney, appeared on behalf of the government, along with Julie Vetter, McCracken's supervising probation officer. At the detention hearing, the parties proposed a recommended disposition of the petition. Thus, on January 3, 2007, the magistrate judge conducted a hearing on the alleged violation of conditions of supervised release. Because the matter was scheduled as a detention hearing only, the magistrate judge did not anticipate hearing the merits of the petition and had not determined the possible penalty upon revocation of supervised release. However, McCracken requested that the court proceed without this information. McCracken admitted the allegations contained in the petition, and the magistrate judge finds that his admission was voluntary and knowingly made and that it has a basis in fact. Accordingly, the magistrate judge **RECOMMENDS** a finding that a violation of a condition of supervision has occurred.

The parties proposed the following modifications of McCracken's conditions of supervised release:

- (1) McCracken must reside at Robinson Recovery Center for a period of time up to six months and shall participate in the facility's program and abide by its rules and regulations. After four months, the supervising probation officer will review McCracken's status and progress with the staff at Robinson Recovery Center and report to the court.
- (2) McCracken shall not be permitted to participate in work release until and unless the staff at Robinson Recovery Center determines work release is appropriate.
- (3) Upon release from Robinson Recovery Center, all previous conditions of supervised release shall remain in effect.

- (4) As an additional condition of release, McCracken shall submit his person, residence, workplace, vehicle, property and/or possessions to a search conducted by a United States Probation Officer, or other law enforcement officer, at a reasonable time and in a reasonable manner based upon reasonable suspicion of contraband or evidence of a violation of supervision. Failure to submit to a search may be grounds for revocation. The officer shall notify any occupants that the premises may be subject to searches pursuant to this condition. A probation officer may invoke a search with or without the assistance of other law enforcement officers.

The magistrate judge finds the recommended disposition appropriate and **RECOMMENDS** McCracken's supervised release conditions be modified as stated above.

The parties have waived their right to object to this Report and Recommendation, so an order and judgment may issue immediately. The magistrate judge has issued an order setting conditions of release pending disposition of this matter which comports with these recommendations. Consequently, McCracken was released from custody and entered Robinson Recovery Center on January 4, 2007.

Dated this 4th day of January, 2007.

/s/ Karen K. Klein

Karen K. Klein  
United States Magistrate Judge